

~~CONFIDENTIAL~~

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARLOH JESSIE BLACHER,)	No. C 12-4775 RMW (PR)
)	
Petitioner,)	ORDER GRANTING LEAVE TO
)	PROCEED IN FORMA
vs.)	PAUPERIS; ORDER TO SHOW
)	CAUSE
)	
L.S. MCEWEN,)	
)	
Respondent.)	

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner's application to proceed in forma pauperis is GRANTED. The court orders respondent to show cause why a writ of habeas corpus should not be granted.

BACKGROUND

According to the petition, petitioner was convicted in Contra Costa County Superior Court for murder and related charges, and sentenced to a term of twenty-five years to life. Petitioner filed the underlying petition on August 20, 2012.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); Rose

1 v. Hodges, 423 U.S. 19, 21 (1975).

2 A district court shall “award the writ or issue an order directing the respondent to show
3 cause why the writ should not be granted, unless it appears from the application that the
4 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

5 **B. Petitioner’s Claims**

6 As grounds for federal habeas relief, petitioner alleges that: (1) he received ineffective
7 assistance of counsel; (2) the prosecutor committed misconduct; (3) there was insufficient
8 evidence to support his convictions; (4) the trial court gave erroneous jury instructions; and (5)
9 he was denied a fair trial when the jury observed him in physical restraints. Liberally construed,
10 the court orders respondent to show cause why the petition should not be granted.

11 **CONCLUSION**

12 1. Petitioner’s motion for leave to proceed in forma pauperis is GRANTED. The
13 clerk shall serve by mail a copy of this order and the petition (docket no. 1) and all attachments
14 thereto upon the respondent and the respondent’s attorney, the Attorney General of the State of
15 California. The clerk shall also serve a copy of this order on the petitioner.

16 2. Respondent shall file with the court and serve on petitioner, within **sixty days** of
17 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing
18 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
19 Respondent shall file with the answer and serve on petitioner a copy of all portions of the
20 underlying state criminal record that have been transcribed previously and that are relevant to a
21 determination of the issues presented by the petition.

22 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
23 court and serving it on respondent within **thirty days** of the date the answer is filed.

24 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
25 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
26 2254 Cases within **sixty days** of the date this order is filed. If respondent files such a motion,
27 petitioner shall file with the court and serve on respondent an opposition or statement of non-
28 opposition within **twenty-eight days** of the date the motion is filed, and respondent **shall** file

1 with the court and serve on petitioner a reply within **fourteen days** of the date any opposition is
2 filed.

3 4. It is petitioner's responsibility to prosecute this case. Petitioner is reminded that
4 all communications with the court must be served on respondent by mailing a true copy of the
5 document to respondent's counsel. Petitioner must keep the court and all parties informed of any
6 change of address by filing a separate paper captioned "Notice of Change of Address." He must
7 comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal
8 of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

9 IT IS SO ORDERED.

10 DATED: ~~FFD~~ ~~DEC~~ ~~15~~ ~~2012~~ _____


RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARLON JESSIE BLACHER,
Plaintiff,

Case Number: CV12-04775 RMW

CERTIFICATE OF SERVICE

v.

L S MCEWEN et al,
Defendant.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 3, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Marlon Jessie Blacher CDC G-50077
California State Prison Los Angeles County
P O Box 8457
Lancaster, CA 93539-8457

Dated: December 3, 2012

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk